

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TONY HORTON,

Petitioner,

v.

CATHERINE S. BAUMAN,

Respondent.

Case No. 18-10074

Honorable Laurie J. Michelson

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**ORDER DISMISSING CASE**

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On January 8, 2018, Tony Horton filed a motion seeking an additional 30 days to file his petition for habeas corpus. (R. 1.) On January 17, 2018, the Court issued a deficiency order requiring Horton to first file a habeas petition and to submit either the filing fee or an application to proceed *in forma pauperis* within 21 days of the order. (R. 3.) The order advised that failure to comply could result in dismissal. (*Id.*) Horton subsequently submitted an application to proceed *in forma pauperis*, which the Court granted on February 8, 2018. (R. 5, 6.) Horton has yet to file a petition for a writ of habeas corpus, however, and the time for doing so pursuant to the order has long since elapsed.

It is well-established that a party must file a complaint to institute a civil action in federal court. Fed. R. Civ. P. 3. And in a habeas corpus proceeding, the case commences with the filing of an application for habeas corpus relief—the equivalent of a complaint in an ordinary civil case. *See Woodford v. Garceau*, 538 U.S. 202, 208 (2003). Prior to the filing of a complaint, “an action has not ‘commenced’ within the meaning of the Federal Rules” and the Court lacks subject matter jurisdiction over the action. *See Luna v. Ford Motor Co.*, No. 3:06-0658, 2007 WL 837237 \*2

(M.D. Tenn. March 14, 2007) (“Prior to the filing of a complaint a court lacks subject matter jurisdiction”).

Accordingly, the Court DISMISSES this case for lack of jurisdiction. This dismissal is without prejudice to Horton instituting a new civil action by filing a habeas petition under 28 U.S.C. § 2254. The Court makes no determination as to the procedural or substantive merits of any such petition.

SO ORDERED.

s/Laurie J. Michelson  
LAURIE J. MICHELSON  
UNITED STATES DISTRICT JUDGE

Dated: October 9, 2018

I hereby certify that a copy of the foregoing document was served upon Petitioner on this date, October 9, 2018, by first-class U.S. mail.

s/William Barkholz  
Case Manager